

Matthew A. Rosenthal (SBN 279334)  
matt@westgatelaw.com  
Westgate Law  
15760 Ventura Blvd, Suite 800  
Los Angeles, CA 91436  
Tel: (818) 200-1497  
Fax: (818) 869-2208  
Attorneys for Plaintiff,  
SHANE PFANNENSTIEL

**IN THE UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

SHANE PFANNENSTIEL,	)	<b>Case No.: 2:16-cv-375</b>
	)	
Plaintiff,	)	<b>COMPLAINT AND DEMAND FOR</b>
	)	<b>JURY TRIAL</b>
v.	)	<b>(Unlawful Debt Collection Practices)</b>
	)	
NAVY FEDERAL CREDIT UNION,	)	
	)	
Defendant.	)	

SHANE PFANNENSTIEL (Plaintiff), by his attorneys, WESTGATE LAW, alleges the following against NAVY FEDERAL CREDIT UNION (Defendant):

**INTRODUCTION**

1. Count I of Plaintiff's Complaint is based on the Telephone Consumer Protection Act, 28 U.S.C. § 227 *et seq.* (TCPA).
2. Count II of Plaintiff's Complaint is based on the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788 *et seq.* (RFDCPA).

### **JURISDICTION AND VENUE**

3. Jurisdiction of this Court over Plaintiff's Complaint arises pursuant to 28 U.S.C. § 1331 as Plaintiff's claims arise under the laws of the United States, and this Court maintains supplemental jurisdiction over the state law claims alleged herein.
4. Defendant conducts business in the State of California thereby establishing personal jurisdiction.
5. Venue is proper pursuant to 28 U.S.C. § 1391(b) because the acts and transactions alleged in this Complaint occurred here, Plaintiff resides here, and Defendant transacts business here.

### **PARTIES**

6. Plaintiff is a natural person residing in Los Angeles, Los Angeles County, California.
7. Defendant is a business entity with a principal place of business in Vienna, Virginia.
8. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

### **FACTUAL ALLEGATIONS**

9. Since approximately 2015, and specifically within four years prior to the filing of this action, Defendant contacted Plaintiff to collect money, property or their equivalent, due or owing or alleged to be due or owing.
10. Since approximately 2015, and specifically within four years prior to the filing of this action, Defendant constantly and continuously placed collection calls to Plaintiff at Plaintiff's cell phone number ending in 6662.
11. When Plaintiff answered Defendant's calls, Plaintiff was greeted with an audible click and delay before speaking to an operator.
12. At all times relevant to this action, while conducting business in California, Defendant has been subject to, and required to abide by, the laws of the United States, which included

1 the TCPA and its related regulations that are set forth at 47 C.F.R. § 64.1200 (“TCPA  
2 Regulations”), as well as the opinions, regulations and orders issued by the courts and the  
3 FCC implementing, interpreting and enforcing the TCPA and the TCPA regulations.

4 13. At all times relevant to this action, Defendant owned, operated and or controlled an  
5 “automatic telephone dialing system” as defined by TCPA 47 U.S.C. § 227(a)(1) that  
6 originated, routed and/or terminated telecommunications.

7 14. Within four years prior to the filing of this action, Defendant called Plaintiff at Plaintiff’s  
8 cellular telephone using equipment which has the capacity to store or produce telephone  
9 numbers to be called, using random or sequential number generator and to dial such  
10 numbers, also known as an “automatic telephone dialing system” as defined by TCPA 47  
11 U.S.C. § 227(a)(1)(A) and (B).

12 15. Defendant never received Plaintiff’s consent to call Plaintiff on Plaintiff’s cellular  
13 telephone using an “automatic telephone dialing system” or an “artificial or prerecorded  
14 voice” as defined in 47 U.S.C. § 227 (a)(1).

15 16. Even assuming arguendo that Defendant did have consent to call Plaintiff on Plaintiff’s  
16 cellular telephone using an ATDS, that consent was subsequently revoked by Plaintiff.  
17 On countless occasions, including but not limited to October 20, 2015 at approximately  
18 12:29 p.m., Plaintiff revoked consent by answering Defendant’s calls and demanding that  
19 Defendant’s calls cease.

20 17. Despite Plaintiff’s request to cease, Defendant continued to place multiple collection calls  
21 per day to Plaintiff on a near-daily basis.

22 18. At no time have Plaintiff and Defendant had an “established business relationship” as  
23 defined by 47 U.S.C. § 227(a)(2).

24 19. Defendant is not a tax exempt nonprofit organization.  
25

1 20. Defendant's violation of the TCPA was willful because Plaintiff requested that Defendant  
2 cease calling Plaintiff on countless occasions.

3 **FIRST CAUSE OF ACTION**

4 **(Violations of the TCPA, 47 U.S.C. § 227)**

5 21. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though  
6 fully stated herein.

7 22. Defendant violated the TCPA. Defendant's violations include, but are not limited to the  
8 following

9 (a) Within four years prior to the filing of this action, on multiple occasions,  
10 Defendant violated TCPA 47 U.S.C. § 227 (b)(1)(A)(iii) which states in pertinent  
11 part, "It shall be unlawful for any person within the United States . . . to make any  
12 call (other than a call made for emergency purposes or made with the prior express  
13 consent of the called party) using any automatic telephone dialing system or an  
14 artificial or prerecorded voice — to any telephone number assigned to a . . . cellular  
15 telephone service . . . or any service for which the called party is charged for the  
16 call.

17 (b) Within four years prior to the filing of this action, on multiple occasions,  
18 Defendant willfully and/or knowingly contacted Plaintiff at Plaintiff's cellular  
19 telephone using an artificial prerecorded voice or an automatic telephone dialing  
20 system and as such, Defendant knowing and/or willfully violated the TCPA.

21 23. As a result of Defendant's violations of 47 U.S.C. § 227, Plaintiff is entitled to an award  
22 of five hundred dollars (\$500.00) in statutory damages, for each and every violation,  
23 pursuant to 47 U.S.C. § 227(b)(3)(B). If the Court finds that Defendant knowingly and/or  
24 willfully violated the TCPA, Plaintiff is entitled to an award of one thousand five hundred  
25 dollars (\$1,500.00), for each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B) and  
47 U.S.C. § 227(b)(3)(C).

24 24. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in the future.

**SECOND CAUSE OF ACTION**

**(Violations of the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788)**

25. Plaintiff repeats and realleges all of the allegations in Count I of Plaintiff's Complaint as the allegations in Count II of Plaintiff's Complaint.

26. Defendant violated the RFDCPA based on the following:

- a. Defendant violated §1788.11(d) of the RFDCPA by causing a telephone to ring repeatedly or continuously to annoy the person called;
- b. Defendant violated §1788.11(e) of the RFDCPA by communicating, by telephone or in person, with the debtor with such frequency as to be unreasonable and to constitute an harassment to the debtor under the circumstances;
- c. Defendant violated §1788.17 of the RFDCPA by continuously failing to comply with the statutory regulations contained within the FDCPA, 15 U.S.C. § 1692.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that judgment be entered against Defendant for the following:

- (a) An injunction prohibiting Defendant from contacting Plaintiff on Plaintiff's cellular telephone using an automated dialing system pursuant to 47 U.S.C. § 227(b)(3)(A); and
- (b) As a result of Defendant's violations of 47 U.S.C. § 227(b)(1), Plaintiff is entitled to and requests five hundred dollars (\$500.00) in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B); and
- (c) As a result of Defendant's willful and/or knowing violations of 47 U.S.C. § 227(b)(1), Plaintiff is entitled to and requests treble damages, as provided by statute, up to one thousand five hundred dollars (\$1,500.00), for each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C); and
- (e) Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed under the law; and

1 (f) For such other and further relief as the Court may deem just and proper.

2 **DEMAND FOR JURY TRIAL**

3 Please take notice that Plaintiff demands a trial by jury in this action.

4  
5 Date: January 18, 2016

RESPECTFULLY SUBMITTED,

6 By: /s/ Matthew A. Rosenthal  
7 Matthew A. Rosenthal  
8 Attorney for Plaintiff,  
9 SHANE PFANNENSTIEL  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25